

Yorkregion.com

'This is a case of bullying': Judge slams United Soils in anti-SLAPP case

Former town councillor Phil Bannon sent email to United Soils boss Alec Cloke calling defendant Kayt Barclay 'ditch pig'

News Apr 20, 2018 by [Simon Martin](#) *Stouffville Sun-Tribune*



United Soils Management owns a large gravel pit at 14245 Ninth Line in Whitchurch-Stouffville, south of Musselman's Lake. - Susie Kockerscheidt/Metroland



A picture of United Soils boss Alec Cloke was in the centre atop Mayor Justin Altmann's infamous bathroom wall mind map. This photo as been distorted in Adobe Photoshop by Brian Hughes. - Ali Raza/Metroland



A photo of Kayt Barclay that was posted on her Facebook page. - Facebook/Kayt Barclay

1 / 3

“Ditch pig ...”

Kayt Barclay let out an audible gasp at an Osgoode Hall courtroom in Toronto when she heard the words read aloud.

They were the words sent in an email from former Whitchurch-Stouffville councillor and failed mayoral candidate Phil Bannon to United Soils boss Alec Cloke about Barclay in 2014 after she wrote a critical letter to the Stouffville-Sun Tribune.

The Musselman’s Lake resident was being sued for \$120,000 by United Soils because she said on Facebook that Phil Bannon was in the pocket of United Soils.

Related Content

-



[Stouffville woman buries United Soils in SLAPP case](#)

Justice Janet Wilson stared at United Soils' lawyer, William Chalmers, with an, 'Are you serious?' look as he tried to explain how this relationship between Bannon and Cloke was not unusual at all. She considered the various defences and tossed out the United Soils lawsuit April 19.

For the second time in less than year, United Soils was found to have brought a lawsuit in bad faith against a Stouffville resident.

Wilson held no punches in her decision, writing that United Soils showed no remorse in pursuing a \$120,000 lawsuit against Barclay.

“This is a case of bullying,” Wilson said. “(United Soils) brought this proceeding in bad faith and for an improper purpose of stifling public debate around a crucially important public issue — protecting a clean water supply.”

Wilson not only found no grounds for the lawsuit, she also awarded damages of \$20,000 to Barclay under the province's new anti-SLAPP legislation, and ordered United Soils to pay Barclay's legal fees of \$126,438.

According to Sotos LLP (Barclay's law firm), it was the second case where damages were awarded to a defendant under the legislation. [The other case also involved United Soils, which sued Stouffville school teacher Katie Mohammed, who was awarded \\$7,500.](#) That case is being appealed



YOU MIGHT BE INTERESTED IN...



[Crime](#)

[Markham teen charged after speeding 127 km/h in 40...](#)



[Elections](#)

[Tom Vegh announces intention to seek Newmarket...](#)



[Pets](#)

[Georgina launches online dog registration and...](#)

"I feel amazing," Barclay said from her winter home in the United States. "This is just the worst thing that happened to me in my entire life. I feel totally vindicated. I was very scared. I was stressed. I couldn't sleep."

Barclay said she was worried that she would have to use all her retirement savings to pay for legal fees.

Cloke said he will appeal the ruling.

The details show Cloke having an "unusually close" relationship with some members of Whitchurch-Stouffville council, Wilson said.

In 2016, Barclay was part of a contingent of Whitchurch-Stouffville residents that felt an amendment permitting the dumping of potentially hazardous waste at the United Soils site was rushed through town council without adequate concern for safety.

A closed Facebook group known as the Hydrovac Protest Group was created by former mayor Sue Sherban and others, reaching 632 members. Barclay was an active participant in the group.

On Sept. 12, 2016, someone posted a letter Barclay wrote to the Stouffville Sun-Tribune two months before the 2014 election in which she questioned why then Ward 2 councillor and mayoral candidate Bannon was advocating to reduce the cost of dumping per fill truck by 75 cents.

In response to the post, Barclay wrote: "Oh I remember, it was when the new bylaw was being passed two years ago and our lovely councillor Phil Bannon asked that fees be dropped. It made my blood boil, for sure he was in the pocket of United Soils. Now we have Maurice Smith doing the same thing."

According to court documents, local resident Darlene Shaw, who works under contract as a consultant for United Soils, provided Cloke a screenshot of Barclay's post. Cloke was not a member of the group.

Within three and half hours of Barclay's post, Cloke personally sent an email copying his lawyer from Aird & Berlis to Barclay saying he has asked his lawyer to start lawsuit regarding her post, adding "I look forward to the process".

On Sept. 14, 2016 Barclay received a notice of libel. She deleted the post Sept. 15.

The Facebook group was shutdown Sept. 16 as a result of various members receiving notices of defamation and warnings of defamation lawsuits from United Soils.

On Sept. 19, Barclay was served with a statement of claim suing her for damages of \$100,000 for libel, aggravated damages of \$10,000 and punitive damages of \$10,000, totalling \$120,000.

As part of the case, what Wilson called "astounding" emails between Bannon and Cloke from 2014 were presented, discussing Barclay's letter to the Sun-Tribune.

Cloke sent an email to Bannon and Ward 6 Councillor Rob Hargrave with the link to the letter, saying Barclay was a friend of local resident Bob James. Bannon responded 12 minutes later.

"This is what I thought ... She is the ditch pig that James uses as his complainant in the paper," Bannon wrote. "She lives two house away from him and is the pig that came to council with him and his wife the other night ... so James (is) the author of the letter to the editor!!!"

"I fix," Cloke responded.

Barclay said she was disappointed a councillor would call a resident a ditch pig because the resident pointed out something that was not in the best interest of the town.

There is sufficient evidence of an unusual or influential relationship between United Soils and Bannon, Wilson wrote.

“This proceeding was brought in bad faith, with malice, and for improper purpose,” she wrote. “It is clear that United Soils and Cloke have used the justice system in this action, and others, for an improper purpose and in bad faith to stifle important and appropriate public debate.”

The lawsuit accomplished United Soils' goal to create an atmosphere of fear and apprehension so that ordinary citizens may be fearful in speaking out for fear of being sued, Wilson said.

“This is a classic example of libel chill: attempting to stop public debate of concerned citizens by inappropriate use of the justice system,” she wrote.

According to the ruling, United Soils threatened defamation to five individuals for Facebook comments and has proceeded on court actions in three cases.

In the wake of the decision, Barclay had a message for Stouffville residents: “(You) don’t need to be afraid to speak out about anything that is true and right.”

The anti-SLAPP legislation came into effect November 2015. The Protection of Public Participation Act is meant to protect the rights of Ontario residents to speak out on public issues without fear, Sotos lawyer Sabrina Callaway said.

While the Mohammed and Barclay cases had many similarities, Callaway said one of the biggest differences in the Barclay case was the judge's interpretation of damages.

In her ruling, Wilson said Barclay did not necessarily require proof of harm to be awarded damages of \$20,000.

"It is through punitive damages that the civil justice system expresses outrage at egregious conduct," Wilson wrote. "The email correspondence between Cloke and members of town council brings the conduct into the range of exceptional, and warrants denunciation and deterrence."

[United Soils v Barclay](#) by [Simon Martin](#) on Scribd



by [Simon Martin](#)

Simon Martin is a reporter for the East Gwillimbury Express, King Connection, Stouffville Sun-Tribune, YorkRegion.com and their sister papers. He can be reached at smartin@yrmg.com. Follow him on [Twitter](#) and YorkRegion.com on [Facebook](#).

Email: smartin@yrmg.com [Facebook](#) [Twitter](#)